IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE KURIAN JOSEPH**
**&**
**THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

**FAO.No. 170 of 2006()**
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**OS.205/2002 of PRINCIPAL SUB COURT,ERNAKULAM**
**.....**

APPELLANT/3RD DEFENDANT:
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SREEKUMARAN NAIR, MURINGAL PARAMBIL,
KOLLAMPADI, TRIPUNITHURA.

BY ADV. SRI.M.P.ABRAHAM (SR.)
ADV. SRI.C.V.JOHNY

RESPONDENTS/PLAINTIFF & DEFENDANT NOS. 1 AND 2:
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1. SAKTHI FINANCE LTD., ERNAKULAM BRANCH OFFICE, SAHODHARAN AYYAPPAN ROAD, ERNAKULAM, KOCHI-16.

2. T.T.VALLIAMMAL,
16/825, SANJAY NAGAR, THOPPUMPADI,
KOCHI-5.

3. MAHALINGAM, 26/824, SANJAY NAGAR,
THOPPUMPADY, ERNAKULAM.

BY ADV. SRI.M.K.DILEEPAN
ADV. SRI.DEEPAK T.NEDUNGADAN
ADV. SMT.P.SUMITHRA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**KURIAN JOSEPH & K.T. SANKARAN, JJ.**

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**F.A.O. No. 170 OF 2006**

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**Dated this the 20th March, 2007**

**J U D G M E N T**

**Sankaran, J:**

The petitioner, who is the third defendant in O.S. 205 of 2002 on the file of the Sub Court, Ernakulam filed I.A. Nos. 3063 of 2005 and 3062 of 2005 to set aside the ex parte decree passed against him, after condoning the delay. Those applications were posted on 03.04.2006. The appellant and the counsel were absent on that day and therefore the court below dismissed the applications. I.A. Nos. 2093 of 2006 and 2094 of 2006 were filed to restore I.A.Nos. 3063 of 2005 and 3062 of 2005 respectively. The court below dismissed those applications by the order impugned in this appeal.

2. The case of the appellant is that the advocate's clerk had noted the date as 04.04.2006 instead of 03.04.2006 and therefore the counsel as well as the appellant were absent before the court on 03.04.2006 when the case was called.

In the facts and circumstances of the case and also taking a lenient view in the matter, we are inclined to set aside the order impugned on condition that the appellant shall pay a sum of Rs.2,000/- (Rupees two thousand only) as costs to the first respondent . In the result, F.A.O. is allowed on condition that the appellant shall pay a sum of Rs. 2,000/- (Rupees two thousand only) as costs to the first respondent within a period of three weeks from today. Costs shall be paid to the counsel appearing for the first respondent

**KURIAN JOSEPH,**
**JUDGE.**

**K.T. SANKARAN,**
**JUDGE.**

**lk**